

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MAXINE KELLY, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

GREGORY KELLY,

Respondent-Appellant,

and

DELORIS OSBY,

Respondent.

UNPUBLISHED

September 22, 2009

No. 291024

Kent Circuit Court

Family Division

LC No. 07-054311-NA

Before: Murphy, P.J., and Meter and Beckering, JJ.

PER CURIAM.

Respondent Gregory Kelly appeals as of right from the trial court's order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), and (h). We affirm.

The trial court did not clearly err by finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). Respondent was sentenced on August 10, 2006, to a prison term of 15 to 40 years, and this Court has affirmed respondent's convictions and sentences. See *People v Kelly*, unpublished opinion per curiam of the Court of Appeals, issued January 10, 2008 (Docket No. 272820). And our Supreme Court denied respondent's application for leave to appeal in his criminal case. *People v Kelly*, 481 Mich 868; 748 NW2d 567 (2008).

Accordingly, the conditions that led to the adjudication continued to exist, and there was no reasonable likelihood that they would be rectified within a reasonable time considering the child's age. The child was nearly 13 years old at the time of trial and will no longer be a minor child when respondent is released from prison. Even if application of MCL 712A.19b(3)(c)(i) in the context of this case might be questionable, there was sufficient evidence to support termination on the other grounds cited by the court; only one ground is necessary, MCL 712A.19b(3). For purposes of MCL 712A.19b(3)(g), the evidence showed that respondent failed

to provide proper care and custody for his child,¹ and there was no reasonable expectation that he would be able to do so within a reasonable time. We note that the criminal convictions for which respondent is currently incarcerated include transporting a female for purposes of prostitution. Moreover, under MCL 712A.19b(3)(h), his imprisonment would continue for such a time that the child would be deprived of a normal home for a period exceeding two years, and, once again, the evidence showed that he failed to provide proper care and custody for the child and there was no reasonable expectation that he would be able to do so within a reasonable time, considering the child's age.

Additionally, we reject respondent's argument that termination was improper because petitioner failed to offer him a parent-agency treatment plan or reunification services. The record indicates that, because of respondent's extended incarceration and the circumstances of this case, a treatment or reunification plan was not developed by petitioner. "Services are not mandated in all situations[.]" *In re Terry*, 240 Mich App 14, 25 n 4; 610 NW2d 563 (2000), citing MCL 712A.18f(1)(b) ("If services were not provided to the child and his or her parent, guardian, or custodian, the reasons why services were not provided" must be reported). Also, "[s]ervices need not be provided where reunification is not intended." *In re LE*, 278 Mich App 1, 21; 747 NW2d 883 (2008). Reversal for failure to provide a treatment or reunification plan is unwarranted under the facts presented. The trial court did not clearly err in terminating respondent's parental rights.

Further, the trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Respondent will not be able to provide for her at any time during the remainder of her adolescence. The child was residing at St. John's Home at the time of trial and was expected to be placed in the St. John's Academy Program. Caseworkers were also looking into placing her with her aunt. Thus, a permanent placement for the child was being explored. Considering the child's need for permanency and respondent's inability to provide for her, termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ William B. Murphy

/s/ Patrick M. Meter

/s/ Jane M. Beckering

¹ Respondent himself acknowledges that he only provided care for the child and had a relationship with her until she was approximately six years old. Even this time period is questionable relative to care and custody, given that respondent did a previous prison stint from 1999 to 2003; the child was born in 1996.